

PUBLIC SERVICE COMMISSION

State of North Dakota

Laws and Rules Governing Auctioneers and Auction Clerks

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AUCTIONEER AND AUCTION CLERK

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LAWS

CHAPTER 51-05.1

AUCTIONEERS' AND CLERKS' LICENSES

Section

51-05.1-01	<u>Auctioneering or clerking without a license prohibited.</u>
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51-05.1-01. Auctioneering or clerking without a license prohibited. No person may conduct a sale as an auctioneer or clerk unless licensed by the public service commission.

51-05.1-01.1. Auctioneer's license - Clerk's license - Fees - Bonds. Application for an annual auctioneer's or clerk's license must be in writing, verified, and must show the name, residence, and address of the applicant. An application must be filed at least ten days prior to the first auction sale the applicant is to conduct or clerk. Application for renewal of an annual license must be on forms designated by the commission. The fee for the annual license or renewal is thirty-five dollars and must accompany the application. The name and license number must appear on all advertising of sales conducted by an auctioneer or clerk. Renewals that are not submitted by January thirty-first must be assessed an additional twenty-five dollar fee.

Before a license is issued to an auctioneer or auction clerk, the applicant must file a corporate surety bond with the commission. This bond must provide annual coverage of not less than five thousand dollars for an auctioneer or ten thousand dollars for an auction clerk, must run to the state of North Dakota, and must be for the benefit of any person injured by the licensee's improper conduct. Bonds may not be canceled on less than sixty days' written notice to the commission. When a licensee states that it is bonded, the size of the bond must be stated.

51-05.1-01.2. Exemptions. A license under this chapter is not required for the following:

1. Sale of an estate by an executor or an administrator.

2. Sale by a sheriff or other person under court order.
3. Sale by a public official acting in an official capacity.
4. Sale of purebred or registered livestock.

A bond is not required for a federally insured financial institution to clerk a sale. Persons exempt from licensing or bonding under this section shall comply with all other provisions of this chapter.

51-05.1-02. License standards.

1. Licenses may be granted only to persons who bear a good reputation for honesty, truthfulness, and fair dealing and who are competent to transact the business of an auctioneer or a clerk.
2. An applicant for a license must be at least eighteen years of age. Every applicant for a license as an auctioneer shall: a. Have been actively engaged as a licensed auctioneer for a period of at least one year preceding the date of application; or b. Furnish proof of satisfactory completion of an approved course of study relating to auctioneers.

51-05.1-02.1. Conviction not bar to licensure - Exceptions. Conviction of an offense does not disqualify a person from licensure under this chapter unless the public service commission determines that the offense has a direct bearing upon a person's ability to serve the public as an auctioneer, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

51-05.1-03. Investigation - Grounds for refusal, suspension, or revocation of license - Hearing on appeal.

1. The public service commission upon its own motion may, and upon the verified complaint in writing of any person shall, investigate the activities of any licensee or any person who shall assume to act in such capacity within the state, and shall have the power to suspend or revoke a license when the licensee, in performing or attempting to perform any of the acts included within the scope of this chapter, has performed one or more of the following:
 - a. Made a material false statement in the licensee's application for a license or in any information furnished to the commission.
 - b. Made a substantial and willful misrepresentation relating to an auction sale which injures the party for which he acts as agent.
 - c. Made any false promise of a character such as to influence, persuade, or induce a party to an auction sale to his injury or damage.

- d. Failed to account for or to remit, within a reasonable time, not exceeding fifteen days, any moneys coming into his possession belonging to another, or subsequent to July 1, 1975, commingled funds of others with his own, failed to keep such funds or others in an escrow or trust account with a bank or other recognized depository in this state, or failed to keep records relative to the deposits, which must contain such information as may be prescribed by the rules and regulations of the commission relative thereto.
 - e. Pled guilty or nolo contendere before, or been convicted by, any federal court or a court of competent jurisdiction in this or any other state of an offense determined by the commission to have a direct bearing upon a person's ability to serve the public as an auctioneer, or the board determines, following conviction of any offense, that the person is not sufficiently rehabilitated under section 12.1-33-02.1.
 - f. Failed or refused upon demand to produce any document, book, or records in his possession or under his control, concerning any auction sale under investigation by the commission.
 - g. Failed to deliver to the seller in every auction sale, a complete, detailed closing statement, showing all the receipts and disbursements handled by such licensee for the seller, and to retain true copies of such statements in his files for two years.
 - h. Violated any provisions of this chapter or chapter 41-02, 51-12, or 51-15, or rule or regulation promulgated by the commission.
2. If the public service commission declines or fails to approve an application submitted to it, it shall immediately give notice of that fact to the applicant, and upon request from such applicant filed within twenty days after the receipt of such notice, shall fix a time and place for a hearing, of which twenty days' notice must be given to such applicant and to other persons interested or protesting, to offer such evidence relating to the application. In such cases the commission shall fix the time for such hearing on a date within sixty days from receipt of the request for the particular hearing, provided the time of hearing may be continued from time to time with the consent of the applicant. As a result of such hearing, the commission may either approve the application if all of the applicable provisions of this chapter have been met, or it may sustain its prior decision refusing to approve the application.
 3. No license may be revoked or suspended except after hearing before the public service commission with a copy of the charges having been duly served upon the licensee and upon sustaining the charges for suspension

or revocation. The provisions of chapter 28-32, including but not limited to procedures for service of process, hearing, rules, evidence, findings, and appeals, apply to and govern all proceedings for suspension or revocation of license, except where inconsistent with this chapter.

51-05.1-04. Definitions.

1. An auctioneer within the meaning of this chapter is a person, who for a compensation or valuable consideration, sells or offers for sale either real or personal property at public auction as a whole or partial vocation.
2. A clerk within the meaning of this chapter is any person, firm, partnership, copartnership, association, corporation, or limited liability company, who for a compensation or valuable consideration, is employed either directly or indirectly by an owner while the sale is in progress to record each item offered for sale, its selling price, the buyer's name or number, to collect all proceeds of said sale, to pay all expenses connected with the sale, to prepare a full closing statement of all receipts and disbursements, and make settlement thereon to parties properly entitled thereto within a reasonable length of time.
3. A single act performed, or isolated transactions in the selling of property at auction for another shall not constitute the person performing, offering, or attempting to perform any of the acts enumerated herein, an auctioneer within the meaning of this chapter.
4. "Seller" means the owner or consignor of property to be sold at auction.

51-05.1-04.1.Written contracts. An auctioneer may not sell the property of another at auction without a prior written contract with the seller which sets forth the terms and conditions upon which the auctioneer will sell the property. A similar contract governing the activities of the auction clerk is required between the auction clerk and the seller. The licensee must retain a copy of each contract for at least two years after the auction. This section does not apply to consignment sales where the value of the seller's property is less than five hundred dollars or to livestock markets. The contract must contain:

1. The licensee's name, trade or business name, state license number, business address, and business telephone number.
2. A general description of the property to be sold at auction, any restrictions, and a statement identifying whether or not the licensee is authorized to purchase at the auction.
3. A description of the services to be provided and the consideration for the services. The description must state which party is responsible for advertising and other expenses.

4. The date or dates when the items will be sold at auction.
5. A disclosure of the amount of bond that the licensee has on file with the commission and the commission's address and phone number.

51-05.1-04.2. Buyer's premium. A successful bidder may not be required to pay an amount in excess of the successful bid and governmental fees and taxes, unless before bidding the bidder has signed a statement which clearly describes the additional amount and states how the actual amount due will be determined.

51-05.1-05. Handling of funds by clerk of auction sale. Every clerk of an auction sale shall, at all times, maintain in his name or firm name, a separate trust account designated as such in a federally insured bank or other federally insured depository in this state in which he shall immediately deposit all funds not his own, including funds in which he may have some future interest or claim. A federally insured depository located outside the state but licensed as a clerk in this state is not required to deposit funds in a depository in this state if auction sale funds are deposited in a separate trust account designated as such in the licensee's depository. No clerk may commingle his personal funds or other funds in a trust account except that a clerk may deposit and keep a sum of one hundred dollars in such account from his personal funds, which sum must be specifically identified and deposited to cover service charges related to the trust account. In conjunction with such account, he shall maintain at his usual place of business, books, records, and other documents so that the adequacy of such account may be determined at any time. Trust accounts and other records must be open to inspection by the public service commission and its duly authorized agents at all times during regular business hours at the clerk's usual place of business.

51-05.1-06. License list. Repealed by S.L. 2001, ch. 440, § 2.

51-05.1-07. Penalty. Any person violating any of the provisions of this chapter is guilty of a class B misdemeanor.

CHAPTER 3-05

AUCTIONEERS

Section

3-05-01

[Authority from seller.](#)

3-05-02

[Authority to bind both parties.](#)

3-05-01. Authority from seller. An auctioneer, in the absence of special authorization or usage to the contrary, has authority from the seller only as follows:

1. To sell by public auction to the highest bidder.
2. To sell for cash only, except such articles as usually are sold on credit at auction.
3. To warrant the title, quality, and quantity of personal property sold by him.
4. To prescribe reasonable rules and terms of sale.
5. To deliver the thing sold upon payment of the price to the clerk of the auction.
6. To do whatever else is necessary or proper and usual in the ordinary course of business for effecting these purposes.

3-05-02. Authority to bind both parties. An auctioneer has authority from a bidder at the auction as well as from the seller to bind both by a memorandum of the contract whenever a written memorandum is required by any statute or by usage to make a valid contract of sale, and such memorandum must be in the form and content prescribed.

CHAPTER 9-06
FORMATION OF CONTRACT

Section

9-06-06

Auction sale - Auctioneer memorandum sufficient.

9-06-06. Auction sale - Auctioneer memorandum sufficient. When a sale of any goods or choses in action is made by auction, an entry by the auctioneer in his salebook at the time of the sale of the kind of property sold, the terms of sale, the price, and names of the purchaser and person on whose account the sale is made is a sufficient memorandum.

CHAPTER 12.1-33
RIGHTS OF CONVICTS

Section

12.1-33-02.1 Prior conviction of a crime not bar to state licensures - Exceptions.

12.1-33-02.1. Prior conviction of a crime not bar to state licensures - Exceptions.

1. A person may not be disqualified to practice, pursue, or engage in any occupation, trade, or profession for which a license, permit, certificate, or registration is required from any state agency, board, commission, or department solely because of prior conviction of an offense. However, a person may be denied a license, permit, certificate, or registration because of prior conviction of an offense if it is determined that such person has not been sufficiently rehabilitated, or that the offense has a direct bearing upon a person's ability to serve the public in the specific occupation, trade, or profession.
2. A state agency, board, commission, or department shall consider the following in determining sufficient rehabilitation:
 - a. The nature of the offense and whether it has a direct bearing upon the qualifications, functions, or duties of the specific occupation, trade, or profession.
 - b. Information pertaining to the degree of rehabilitation of the convicted person.
 - c. The time elapsed since the conviction or release. Completion of a period of five years after final discharge or release from any term of probation, parole or other form of community corrections, or imprisonment, without subsequent conviction shall be deemed prima facie evidence of sufficient rehabilitation.
3. If conviction of an offense is used in whole or in part as a basis for disqualification of a person, such disqualification shall be in writing and shall specifically state the evidence presented and the reasons for disqualification. A copy of such disqualification shall be sent to the applicant by certified mail.
4. A person desiring to appeal from a final decision by any state agency, board, commission, or department shall follow the procedure provided by the chapter of this code regulating the specific occupation, trade, or profession. If no appeal or review procedure is provided by such chapter,

an appeal may be taken in accordance with chapter 28-32, except for attorneys disbarred or suspended under chapter 27-14.

CHAPTER 36-09
BRANDS AND MARKS

Section
36-09-22 Sale of animal under false registration certificates - Changing marking -
Auctioneer - Penalty.

36-09-22. Sale of animal under false registration certificates - Changing marking -Auctioneer - Penalty. No person may:

1. Sell any animal with a certificate of registration or breeding that does not belong to said animal.
2. Change in any way the certificate of registration or breeding of any animal.
3. Falsely represent any production record specified in any registration certificate.
4. Change the markings of any animals with intent to deceive the purchaser or misrepresent the sire to which such animal has been bred.

The provisions of this section do not apply to any auctioneer or agent acting in good faith under the direction of the owner.

Any person who violates any of the provisions of this section is guilty of a class B misdemeanor.

CHAPTER 41-02

SALES

PART 3

GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

Section
41-02-45

Sale by auction.

41-02-45. (2-328) Sale by auction.

1. In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.
2. A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.
3. Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.
4. If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.

CHAPTER 41-06

BULK TRANSFERS

[Repealed by S.L. 1993, ch. 410, § 1]

CHAPTER 51-12

FALSE ADVERTISING

Section

51-12-01 [False and misleading advertising prohibited.](#)

51-12-08 [False advertising - Generally.](#)

51-12-01. False and misleading advertising prohibited. No person, firm, corporation, limited liability company, or association with intent to sell, dispose of, increase the consumption of, or induce the public to enter into an obligation relative to, or to acquire title or interest in any food, drug, medicine, patent and proprietary product, merchandise, security, service, medical treatment, paint, varnish, oil, clothing, wearing apparel, machinery, or anything offered to the public, may make, publish, disseminate, circulate, or place before the public, or directly or indirectly shall cause to be made, published, disseminated, circulated, or placed before the public in a newspaper, or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet, tab, label, letter, or in any other way, an advertisement which contains any assertion, representation, or statement of fact, including the price thereof, which is untrue, deceptive, or misleading regarding such food, drug, medicine, patent and proprietary product, merchandise, security, service, medical treatment, paint, varnish, oil, clothing, wearing apparel, machinery, or anything offered to the public.

51-12-08. False advertising - Generally. It is unlawful for any person with intent, directly or indirectly, to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, any statement, concerning such real or personal property or services, professional or otherwise or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

CHAPTER 51-15

CONSUMER FRAUD AND UNLAWFUL CREDIT PRACTICES

Section

51-15-01 Definitions.

51-15-02 Unlawful practices - Fraud - Misrepresentation.

51-15-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Advertisement" includes the attempt by publication, dissemination, solicitation, or circulation, oral or written, to induce, directly or indirectly, any person to enter into any obligation or acquire any title or interest in any merchandise.
2. "Attorney general" means the attorney general of North Dakota or his authorized delegate.
3. "Merchandise" means any objects, wares, goods, commodities, intangibles, real estate, or services.
4. "Person" means any natural person or his legal representative, partnership, corporation, limited liability company, company, trust, business entity, or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee, or cestui que trust thereof.
5. "Sale" means any sale, offer for sale, or attempt to sell any merchandise for any consideration.

51-15-02. Unlawful practices - Fraud - Misrepresentation. The act, use, or employment by any person of any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation, with the intent that others rely thereon in connection with the sale or advertisement of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is declared to be an unlawful practice.

CHAPTER 57-39.2

SALES TAX

Section
57-39.2-01 Definitions.

57-39.2-01. Definitions. The following words, terms, and phrases, when used in this chapter, have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

. . .

8. "Retailer" includes every person engaged in the business of leasing or renting hotel, motel, or tourist court accommodations, and every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or furnishing of steam, gas, and communication services, or tickets or admissions to places of amusement, entertainment, and athletic events including the playing of any machine for amusement or entertainment in response to the use of a coin, or magazines, or other periodicals; any organization licensed by the attorney general to conduct bingo games pursuant to section 53-06.1-03; and includes any person as herein defined who by contract or otherwise agrees to furnish for a consideration a totally or partially finished product consisting in whole or in part of tangible personal property subject to the sales tax herein provided, and all items of tangible personal property entering into the performance of such contract as a component part of the product agreed to be furnished under said contract shall be subject to the sales tax herein provided and the sales tax thereon shall be collected by the contractor from the person for whom the contract has been performed in addition to the contract price agreed upon, and shall be remitted to the state in the manner provided in this chapter; and shall include the state or any municipality furnishing steam, gas, or communication service to members of the public in its proprietary capacity. For the purpose of this chapter, retailer shall also include every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.

RULES

ARTICLE 69-08

AUCTIONEERS AND AUCTION CLERKS

Chapter	
69-08-01	Licensing Requirements.
69-08-02	Records.

CHAPTER 69-08-01 LICENSING REQUIREMENTS

Section	
69-08-01-01	Approved auction schools.
69-08-01-02	Conviction of crimes.

69-08-01-01. Approved auction schools. Auction schools must apply to the commission to have their courses of study approved for use by North Dakota auctioneers. To be approved, a course of study must:

1. Require students to complete at least sixty hours of study in the presence of school instructors, at least forty hours of which is under the supervision of a licensed auctioneer with at least five years of experience.
2. Provide instruction in ethics, bid calling, sales management, advertising, contracts, accounting and bookkeeping, real estate, appraisals, closing statements, license law, uniform commercial codes, tax collection, bulk sales, and firearms.
3. Maintain a grading system that permits the issuance of diplomas or certificates only to students who successfully demonstrate competence in all required areas of study.

To have their course of study approved, an auction school must also provide the commission with a copy of the test instruments and grading standards used to determine student competence.

History: Amended effective January 1, 1994.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 51-05.1-02

69-08-01-02. Conviction of crimes. Conviction of any crime of forgery, bribery, robbery, theft, misapplication of entrusted property, or deception shall be sufficient grounds to deny, suspend, or revoke a license under this chapter unless the commission, after hearing, determines that the applicant is sufficiently rehabilitated to perform the duties specified in this chapter.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 51-05.1-02, 51-05.1-03

CHAPTER 69-08-02 RECORDS

Section

69-08-02-01 [Clerk to retain record of sale.](#)

69-08-02-02 [Closing statement.](#)

69-08-02-01. Clerk to retain record of sale. The clerk shall prepare and retain a record for two years of any auction sale which shall include but not be limited to the following:

1. The name and address of the owner or owners.
2. The date of the sale.
3. The name of the auctioneer and the clerk.
4. The gross proceeds.
5. The location and number of the custodial account.
6. All expenses associated with the sale including auctioneers' and clerks' fees, advertising, and such other expenditures as may be relevant to the conduct of the sale.
7. A list of all purchasers at the sale and a description and price of each item sold.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 51-05.1-03

69-08-02-02. Closing statement. The owner and the auctioneer, if other than the clerk, shall be entitled to a full closing statement after each auction sale.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 51-05.1-03